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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Polo Ralph Lauren, L.P.

Serial No. 75/101,700

Anthony F. Lo Cicero of Amster, Rothstein & Ebenstein for
Polo Ralph Lauren, L.P.

Ann E. Sappenfield, Trademark Examining Attorney, Law
Office 107 (Thomas Lamone, Managing Attorney).

Before Hairston, Chapman and Wendel, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Ralph Lauren Polo,
L.P. to register the mark DENIM for "potpourri and sachets"
(in International Class 3) and "scented candles" (in
International Class 4).¹

¹ Application Serial No. 75/101,700 filed May 9, 1996; alleging a
bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if applied to its goods, would so resemble the mark DENIM which is registered for "cologne and after shave,"² as to be likely to cause confusion.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

At the outset, we note that applicant's and registrant's marks are identical.³ The Board has stated in the past that "[i]f marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983).

In the present case, we find that the record amply supports the Examining Attorney's position that potpourri, sachets and scented candles, on the one hand, and cologne, on the other, are related products. The Examining Attorney

² Registration No. 1,166,891 issued September 1, 1981; Section 8 affidavit accepted.

³ We reject applicant's contention that the marks have different connotations. There is no support in the record for applicant's contention that registrant's mark evokes "images of homespun simplicity." We agree with the Examining Attorney that DENIM is arbitrary as applied to both applicant's and registrant's goods.

has made of record several registrations which indicate that entities have registered a single mark for one or more of the goods on which applicant intends to use its mark and cologne and/or perfume. For example, SATIVA is registered for perfume, cologne and candles; ESTEBAN is registered for perfume, colognes, sachets for perfuming linens, and perfumed candles; EARTH SOURCE is registered for perfumes, perfumed potpourri and perfumed candles; and HERBAL METAPHORS is registered for sachets, perfume, and candles. These registrations serve to suggest that the listed goods are of a type which emanate from a single source. In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988). Further, the Examining Attorney submitted copies of articles and advertisements appearing in magazines, catalogues, and on the Internet which feature one or more of the goods on which applicant intends to use its mark and fragrances. For example, one article discusses THE GAP's new line of "Om" personal products which includes perfume, an aromatic candle and potpourri; an advertisement features FRENCH VANILLA eau de toilette, body cologne mist, potpourri and scented candle; and a catalog features SUMMER HILL eau de toilette and potpourri and VERANDA eau de toilette and potpourri. Finally, the Examining Attorney submitted copies of two magazine articles which indicate

that there is a trend among companies which market toiletries to expand into the home fragrance market, i.e., candles, potpourri and other scented products.

Moreover, since neither applicant's application nor the cited registration contains any limitations as to channels of trade or classes of purchasers, applicant's potpourri, sachets and scented candles and registrant's cologne must be presumed to move in all channels of trade and to be sold to all classes of purchasers normal for these type of goods. Thus, in our likelihood of confusion analysis, we must presume that the parties' goods would be sold to the same classes of purchasers and in the same channels of trade, such as department stores, mass merchandisers, specialty stores, and drug stores.

Under the circumstances, we conclude that purchasers familiar with registrant's cologne offered under the mark DENIM, would be likely to believe, upon encountering applicant's mark DENIM for potpourri, sachets and scented candles, that the goods originated with or were somehow associated with the same source.

To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant and against

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applicant. In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d
1687 (Fed. Cir. 1993).

Decision: The refusal to register is affirmed.

P. T. Hairston

B. A. Chapman

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

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